



Rockland County

Ed Day, Rockland County Executive

DEPARTMENT OF PLANNING

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Douglas J. Schuetz
Acting Commissioner

Arlene R. Miller
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October 22, 2019

Spring Valley Zoning Board of Appeals
200 N. Main Street
Spring Valley, NY 10977

Tax Data: 57.38-1-73.2

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M
Map Date: 8/7/2019

Date Review Received: 9/24/2019

Item: 79 WEST CHURCH STREET (SV-985)

A variance application to allow the construction of a two-family dwelling on a corner lot with 0.13 acres in the R-2 zoning district. Variances are requested for lot area, lot width (Collins Avenue and West Church Street), front yard (Collins Avenue and West Church Street), side yard, rear yard, and Section 255-22H (visibility at intersections)

The northeastern corner of the intersection of West Church Street and Collins Avenue.

Reason for Referral:

Town of Ramapo

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

**Disapprove*

1 The subject site does not meet the minimum lot area standard of 9,000 square feet required for a single-family residence on a corner lot. It provides only a little more than one-half of the lot area required for a two-family dwelling and is non-conforming for width on both street fronts, as well. The proposed two-family residence will require substantial yard variances to accommodate an oversized residential building on an undersized parcel. The surrounding neighborhood is characterized by similarly-sized parcels. Granting these bulk variances will set a precedent that may result in nearby property owners seeking the same relief. A doubling of the residential density in this neighborhood of non-conforming parcels will negatively impact its community character and infrastructure capacity. Additional residents will generate more traffic on the local streets, leading to congestion and traffic conflicts. While two-family residences are permitted as of right in the R-2 zoning district, they are subject to stricter bulk requirements. This site is particularly deficient in meeting these more stringent standards. We recommend that the required variances be denied, and that only a single-family residence be permitted.

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2 Permitting development that does not comply with the applicable bulk standards can set an undesirable land use precedent and result in the overutilization of individual sites. The proposed lot area is 55% of the required minimum. The Collins Avenue and West Church Street lot widths are 95% and 52% of the minimum requirements, respectively. The Collins Avenue and West Church Street front yards are deficient by 40% and 20%, respectively. The side and rear yards are deficient by 33% and 50%, respectively. The ability of the existing infrastructure to accommodate increased residential density on undersized parcels is a countywide concern and must be evaluated. This evaluation must consider whether local roads will become more congested and the sewer system, stormwater management systems and the public water supply will be overburdened. The Village must consider the cumulative and regional impacts of permitting such development. As indicated above, only a single-family dwelling can be constructed to maintain the integrity of the zoning ordinance.

3 The site plan and application review form indicate that the proposed structure is a two-family dwelling. However, the provided architectural plans by Moshe Goldklang & Associates, Inc., dated September 3, 2019, depict a three-family dwelling. The plans indicate that the basement, first floor, and second floor each have separate cooking facilities, laundry facilities, full bathrooms, bedrooms, exterior access, and are physically separated from the other units. Each level of the structure meets the Village's definition of a dwelling unit. Three-family dwellings are not allowed in the R-2 zoning district. A use variance is required to construct the proposed structure. This department is not generally in favor of granting use variances because of the land use precedent that can be set. The granting of use variances requires the demonstration of substantially higher burdens to the applicant than those required by area variances. Specifically, to obtain a use variance, the applicant must prove unnecessary hardship and demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- A. The applicant cannot realize a reasonable return, provided the lack of return is substantial as shown by competent financial evidence.
- B. The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood.
- C. The requested variance will not alter the essential character of the neighborhood.
- D. The alleged hardship is not self-created.

This application does not attempt to prove there is an unnecessary hardship. The proposed three-family dwelling must be disapproved.

4 There are substantial discrepancies between the provided site plan and architectural plans. The site plan indicates a regular, rectangular structure with no projections, entrances or stairways. The architectural plans, however, depict two covered entries proposed along the western façade, two rear decks, a jog along the rear façade, and entries with staircases on each of the northern and southern facades. The stairwell on the northern façade depicted in the architectural plan will block access to parking spaces 1 and 2, as depicted on the site plan. If the rear decks are supported by columns, they will encroach upon parking space 3. All materials must be consistent and any discrepancies between the site plan and architectural plans must be resolved. The site plan must also include all entries, staircases, and decks, and must demonstrate that they comply with all yard requirements and do not encroach upon any parking spaces.

5 The proposed structure requires a variance of Section 255-22.H of the village zoning regulations, which prohibits impediments to visibility at intersections. This is an unacceptable hazard to motorists and pedestrians. The building must be reconfigured to comply with this section of the regulations, and the size of the building reduced to better comply with the zoning ordinance.

The following comments address our additional concerns about this proposal.

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6 The Town of Ramapo is the reason this proposal was referred to this department for review. The municipal boundary is approximately 450 feet west the parcel. New York State General Municipal Law states that the purposes of Sections 239-l, 239-m and 239-n shall be to bring pertinent inter-community and countywide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction. Such review may include inter-community and county-wide considerations in respect to the compatibility of various land uses with one another; traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities; and the protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas. In addition, Section 239-nn was enacted to encourage the coordination of land use development and regulation among adjacent municipalities, and as a result development occurs in a manner that is supportive of the goals and objectives of the general area.

The Town of Ramapo must be given the opportunity to review the proposal and its impact on community character, traffic, water quantity and quality, drainage, stormwater runoff and sanitary sewer service. The areas of countywide concern noted above that directly impact the Town of Ramapo must be considered and satisfactorily addressed, as well as any additional concerns about the proposal.

7 A review must be completed by the Rockland County Department of Health to ensure compliance with Article XIX (Mosquito Control) of the Rockland County Sanitary Code.

8 A review must be completed by the County of Rockland Sewer District No. 1 and all required permits obtained from them.

9 Recently the Rockland County Planning Department has been raising an issue regarding a significant discrepancy of the floor area ratio (FAR) provided on the site plan. The attorney for the Village's ZBA wrote to the County explaining that the FAR does not include the basement if it is 7.5' or less in height. While we are cognizant of the definition for FAR regarding the basement height for the Village, we still have questions regarding the ratio provided on the plans. To date, we have still not received any plans that provide the needed information to make an informed decision regarding the FAR calculation. Given the information provided, and in light of the discrepancies between the site plan and architectural plans discusses above, we believe that this application has a noteworthy discrepancy with the FAR that must be addressed.

The site plan indicates that the proposed structure will have three stories and an FAR of 0.65. However, the site plan shows a building footprint of approximately 2,100 square feet. Assuming each story will have a gross floor area equal to the footprint, a two-story structure will have an overall gross floor area of approximately 4,200 square feet. This would result in an FAR of 0.76. A three-story structure would have an overall gross floor area of 6,300 square feet and an FAR of 1.15. Although these are estimates, FARs of 0.76 and 1.15 are 17% and 77% greater than the allowed maximum FAR of 0.65, respectively. The magnitude of this discrepancy requires further attention. The applicant must positively demonstrate that the proposed structure will conform to the Village's FAR requirement; an FAR calculation must be provided on the site plan. This calculation must include a floor by floor tally of gross floor area and, if applicable, a statement that the basement is exempt from FAR requirements due to its height. If the FAR exceeds the allowable 0.65, the variance application must be amended and the public hearing notice must be reissued. Any application that is revised due to an increase in FAR must be sent to this department for review.

10 The site plan shall contain map notes, including district information.

11 The use of tandem parking spaces prevents egress for vehicles blocked by other vehicles and creates an inconvenient situation for residents. This layout will encourage residents to park vehicles off-site instead of in their designated spaces and negates the purpose of on-site parking requirements. The tandem parking spaces must be reconfigured to allow independent access for all parking spaces.

12 The application form indicates the property receives water service from United Water. The form must be corrected to Suez.

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- 13 The application review form does not indicate that a variance is required for the rear yard. All materials must be consistent. The application review form must be corrected.
- 14 The site plan indicates a tree is located within the driveway along West Church Street. The site plan must note the tree is to be removed.
- 15 The proposed residential building must comply with all requirements of the New York State Uniform Fire Prevention and Building Code. All sidewalks, stairs, decks, and window wells must be shown on the site plan to ensure that there is sufficient access to the building for firefighting purposes.
- 16 The NYS Department of State has determined that the Village is not administering or enforcing the State Uniform Fire Prevention and Building Code in accordance with minimum standards set forth in 19 NYCRR part 1203. Given the concerns about the Village's administration and enforcement of the State Uniform Fire Prevention and Building Code initially raised in the Executive Deputy Secretary of State's letter of July 15, 2016, and subsequently again in December 18, 2017, the proposed residential building must be held to the requisite minimum standards and comply with all requirements of this code.
- 17 Pursuant to General Municipal Law (GML) Section 239-m and 239-n, if any of the conditions of this GML review are overridden by the board, then the local land use board must file a report with the County Commissioner of Planning of the final action taken. If the final action is contrary to the recommendation of the Commissioner, the local land use board must state the reasons for such action.
- 18 In addition, pursuant to Executive Order 01-2017 signed by County Executive Day on May 22, 2017, County departments are prohibited from issuing a County permit, license, or approval until the report is filed with the County Commissioner of Planning. The applicant must provide to any County agency which has jurisdiction of the project: 1) a copy of the Commissioner report approving the proposed action; or 2) a copy of the Commissioner of Planning recommendations to modify or disapprove the proposed action, and a certified copy of the land use board statement overriding the recommendations to modify or disapprove, and the stated reasons for the land use board's override.



Douglas J. Schuetz
Acting Commissioner of Planning

cc: Mayor Alan Simon, Spring Valley
Rockland County Department of Health
Rockland County Sewer District #1
New York State Department of State

Anthony R. Celentano P.E.
Town of Ramapo Planning Board

Rockland County Planning Board Members

**NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.*

The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.

Pursuant to New York State General Municipal Law §239-m(6), the referring body shall file a report of final action it has taken with the Rockland County Department of Planning within thirty (30) days after final action. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.